

TIPP CITY COUNCIL STUDY SESSION

TIPP CITY, MIAMI COUNTY, OHIO

MARCH 1, 2010

Study Session

City Manager Jon Crusey opened the Study Session at 6:47 p.m. on this date.

Council members in attendance included Mayor Dee Gillis, John E. Kessler, Katie Black, Joe Gibson, George Lovett, Bryan Budding, and President Patrick Hale.

Others in attendance: Assistant City Manager Brad Vath, Law Director Joseph Moore, City Engineer Scott Vagedes, Utility Billing Supervisor Stacie Brown, Reporter Nancy Bowman, and Clerk of Council Cathy Ross.

MVRPC Going Places! Presentation

Mr. Martin Kim, Director of Regional Planning of the Miami Valley Regional Planning Commission, shared with Council the attached Going Places! Plan and asked for their support.

City Logo

Mr. Crusey reminded Council of the current logo and the logo that was approved to be placed on the water tower and requested Council's input on updating the logo to the one being placed on the water tower. He noted that he has heard many positive comments on the new logo. Mayor Gillis stated that she liked the new logo and it was noted that she has a new name tag with this logo. Several members of Council shared Mayor Gillis' opinion, but it was suggested that this be an item of discussion at the Council Retreat to be held on March 5, 2010.

Council Retreat

Mr. Crusey reminded Council that the Retreat will be held on Friday, March 5, 2010 and will begin at 9:00 a.m. The Facilitator of the meeting is Donna Childs and Council and Staff should receive an email from her. Ms. Childs would like this questionnaire completed and returned to her as soon as possible.

Adjournment

Meeting adjourned at 7:20 p.m.

Patrick Hale, President

Attest: _____
Cathy A. Ross, Clerk of Council

TIPP CITY COUNCIL MEETING

TIPP CITY, MIAMI COUNTY, OHIO

MARCH 1, 2010

Council Meeting

Patrick Hale called to order the regular meeting of the Tipp City Council at 7:30 p.m. The following Councilmembers were present: President Patrick Hale, Katie Black, Bryan Budding, Joseph Gibson, Mayor Dolores Gillis, George H. Lovett, and John E. Kessler.

Others in attendance: Assistant City Manager Brad Vath, Finance Director Richard Drennen, City Engineer Scott Vagedes, Chief of Police Tom Davidson, City Attorney Joseph P. Moore, and Clerk of Council Cathy Ross.

Guests signing the register included: Scott Brownlee, Terry Riddle, Benjamin , Jill Henson, Steven Chaney, George Brown, Mike McFarland, Jack Berbach, Felix Cooper, Matt Owen, Karen Mayer, Terry Naas, Stephanie Black, Sgt. Joe Mauro, Mark Springer, Marilyn McConahay, and Nancy Bowman.

Invocation and Pledge of Allegiance

Mayor Gillis delivered the invocation and members of Boy Scout Troop #544 led the Pledge of Allegiance.

Approval of Agenda

President Hale made a motion to amend the agenda to include an Executive Session after the meeting to discuss pending litigation. Motion was seconded by Mr. Gibson and unanimously approved.

Mr. Lovett made a motion, seconded by Mr. Budding to approve the amended agenda. Motion was approved with a 7-0 vote.

Adoption of Minutes

Ms. Black made a motion to approve the minutes of the February 16, 2010 Study Session. Motion was seconded by Mr. Kessler and unanimously approved.

Mr. Lovett amended the minutes of the February 16, 2010 Council Meeting on page 25, discussion about GardensAlive!, to read vote of 6-0 instead of 6-1. Mr. Lovett then made a motion to approve the amended minutes, seconded by Mayor Gillis and unanimously approved.

Presentations, Proclamations, and Awards

Mayor Gillis read a Proclamation for Developmental Disabilities Month.

Representatives from Riverside presented certificates of gratitude to the Tipp City Police Department, Sgt. Joseph Mauro, and Patrolman Stephanie Black for their assistance in dealing with their residents and the justice system.

Mr. Matt Owen, Director of the Chamber of Commerce, gave a quarterly report on the Downtown Tipp City Partnership. In 2009, the Partnership received their 5013C designation which will allow them to receive foundation dollars and matching grants. A part-time membership coordinator, Rebecca Woodward, has been hired and will do membership and fundraising. In February, a Strategic Planning Session was conducted. Special events coming up include: June 26 Antique and Artisan Show; May 1st Urban Eva What a Girl Wants Fashion Show for a Cure; Canal Jumpers Baseball Team will have opening day on May 16th at the Willowtree Inn. Midwest Memories and

**Ordinances
(Second Reading)**

Sam & Ethels took advantage of the Façade Improvement Program. Looking to expand the Board. The Miami County Visitor's Bureau is going to create and pay for a 4 minute video promoting Tipp City. This will be on the State's Visitor's Bureau website and the Partnership will be able to use it as well. Mr. Owen stated that he hopes the City will also use it on their website. Remax Professionals recently opened. The Tippecanoe Gazette will be located in the Monroe Township Building.

President Hale questioned if the hiring of the part-time membership coordinator is a move towards making this a full-time position to be self-supporting? Mr. Owen replied that it is a large task for him to take on, and the addition of this part time position gives the Partnership a 40 hour equivalent which is required for Mainstreet application. President Hale asked if they had the support of the downtown business owners for Mainstreet status. Mr. Owen stated that the people involved in the Downtown Partnership are supportive.

President Hale asked how the baseball team had anything to do with the Downtown Tipp City Partnership. Mr. Owen stated that there is no money budgeted for vintage baseball, but that the team is housed under the Partnership in the hopes of generating business during tournaments.

An ordinance providing for the issuance and sale of notes in the maximum principal amount of \$1,875,000, in anticipation of the issuance of bonds, for the purpose of paying (I) the City's portion of the costs of improving County Road 25A between certain termini within the City in cooperation with the Director of Transportation of the State of Ohio by paving, draining and constructing curbs, gutters and necessary approaches, together with all necessary appurtenances thereto, (II) the costs of extending Kinna Drive both Northerly and Southerly from the current termini, by excavating, grading, draining, paving, and curbing, installing street lighting, water lines and storm and sanitary sewer lines, fire protection systems and electric lines, together with all necessary appurtenances thereto and (III) the costs of improving the municipal electric utility by acquiring and installing a 1,825 KW back-up generator, together with all necessary appurtenances thereto.

Clerk of Council Summary: This ordinance will allow the City to roll over notes for County Road 25A improvements, Kinna Drive improvements, and the acquisition and installation of an electric generator.

City Manager Comments: The CR 25-A reconstruction project completed in 2006, the 2009 extension of Kinna Drive, and the electric generator purchased in 2006 are partly financed by the issuance of short-term debt, or 1-year bond anticipation notes. Annually, on the anniversary date of the issuance of the notes, the City must refinance, or rollover, its outstanding notes until such debt is taken long, or financed with long-term debt. The City's bond counsel has prepared this legislation for the sale of the CR-25A note (\$525,000), the Kinna Drive Extension note (\$425,000) and Electric Generator note (\$925,000). Bond anticipation notes in the amount of \$1,875,000 are

scheduled to be sold on April 6, 2010 with the closing taking at the end of April.

There being no further discussion, Mr. Kessler sponsored this ordinance and moved for its adoption. Motion was seconded by Mayor Gillis and passed with a 7-0 vote. Ordinance 6-10 was declared passed and President Hale affixed his signature in witness thereto.

Resolutions
(one reading required)
Horton Avenue
Improvements

A resolution of necessity for improvements on Horton Avenue from Rohrer Drive East to S. Hyatt Street by reconstructing the street and replacing the curb and gutter, sidewalk, and driveway approaches where necessary.

Clerk of Council Summary: This legislation fulfills requirements of the Ohio Revised Code to outline the scope of a project and to provide notice of the City's intent to assess property owners for various public improvements.

City Manager's Comments: This Resolution of Necessity is the first step in the assessment process for the Horton Avenue Reconstruction project. This project involves the reconstruction of the street base and pavement, constructing storm sewer, replacing curb and gutter, driveway approaches, and sidewalk as necessary. The adoption of this resolution declares the necessity to improve Horton Avenue, from Rohrer Road to S. Hyatt Street, and assess the cost of curb & gutter, sidewalk, and driveway approaches against all lots and lands abutting upon said improvement. A three-fourths majority of Council is necessary to adopt this resolution.

Adjoining property owners will be notified in writing of their estimated cost for this project. Upon completion of the project an assessment ordinance will be presented to Council for the actual cost of the project.

Mr. Gibson asked for clarification that the cost would be borne by the homeowners. City Manager Crusey replied that the homeowners would be assessed the cost for curb, gutter, driveway approaches and sidewalk as necessary; the cost of the street would be borne by the City. Mr. Gibson then asked if the assessment would go back into the general fund or if it is an independent project? City Manager Crusey replied that City pays the Contractor and the assessment is a reimbursement to the City. Mr. Drennen added that the money will go back into the Capital Improvement Program. Mr. Budding asked how these streets were chosen to be done first. City Manager Crusey replied that Council decided during the budget process after input from the City Engineer.

There being no further discussion, Mr. Kessler sponsored this resolution and moved for its adoption. Motion was seconded by Mr. Lovett and passed with a 7-0 vote. Resolution 9-10 was declared passed and President Hale affixed his signature in witness thereto.

Hartman Avenue
Improvements

A resolution of necessity for improvements on Hartman Avenue from Miles Avenue East to Kiser Drive by reconstructing the street and replacing the curb and gutter, sidewalk, and driveway approaches where necessary.

Clerk of Council Summary: This legislation fulfills requirements of the Ohio Revised Code to outline the scope of a project and to provide notice of

the City's intent to assess property owners for various public improvements.

City Manager's Comments: This Resolution of Necessity is the first step in the assessment process for the Hartman/ Avenue Reconstruction project. This project involves the reconstruction of the street base and pavement, constructing storm sewer, installing water main and services, replacing curb and gutter, driveway approaches, and sidewalk as necessary. The adoption of this resolution declares the necessity to improve Hartman Avenue, from Miles Avenue to Kiser Drive, and assess the cost of curb & gutter, sidewalk, and driveway approaches against all lots and lands abutting upon said improvement. A three-fourths majority of Council is necessary to adopt this resolution.

Adjoining property owners will be notified in writing of their estimated cost for this project. Upon completion of the project an assessment ordinance will be presented to Council for the actual cost of the project.

Mr. Lovett stated that Hartman and Horton were two of the top three projects that Mr. Vagedes stated the City most needed. Because these streets are not main thoroughfares, the City will not receive funds from other sources for reconstruction. Mr. Lovett added that it was very difficult for the City to come up with the funds to do these projects and that "this is the tip of the iceberg." The City has many other improvements that we can't be done due to insufficient funds. President Hale asked how long these projects have been on the list. Mr. Vagedes stated that Hartman has been on since 2002.

Mr. Gibson asked if this particular resolution authorizes the project, or authorizes the City to assess the property owners for sidewalk and driveway. City Manager Crusey stated that this resolution is the first step in the assessment process and that an ordinance will be brought back at the end of the project to actually assess the property owners.

There being no further discussion, Mr. Lovett sponsored this resolution and moved for its adoption. Motion was seconded by Mayor Gillis and passed with a 7-0 vote. Resolution 10-10 was declared passed and President Hale affixed his signature in witness thereto.

Purchase of Police Vehicles

A resolution authorizing the City Manager to purchase two vehicles for the Police Department from Statewide Ford Lincoln-Mercury, Inc. in Van Wert, Ohio through the State of Ohio Purchasing Plan at a cost not to exceed \$49,077.00

Clerk of Council Summary: The City has budgeted \$51,500 in the Capital Improvement Reserve Fund to purchase two police vehicles and associated equipment.

City Manager's Comments: The adoption of this resolution authorizes the City Manager to purchase two police vehicles (2010 Ford Crown Victoria & 2010 Ford Expedition) at a cost not to exceed \$49,077 from Statewide Ford Lincoln-Mercury through the State of Ohio Cooperative Purchasing Program. The Capital Improvement Reserve Fund includes \$51,500 for the purchase of two police vehicles and associated equipment. These new vehicles will replace a 2006 (99,975 miles) and a 2000 (125,305 miles) vehicle.

Mr. Budding asked how a decision is made on when to replace vehicles. Chief Davidson stated a 4 year retention schedule is in place for cruisers. However, if a vehicle is scheduled for replacement and it is in good condition, but another vehicle is not in such good shape, the Police Department has switched vehicles. Mr. Budding asked if these vehicles have a maintenance record that states that they need to be replaced or if they are just being replaced because it is time according to the schedule. Chief Davidson stated that the year 2000 vehicle, which used to be the canine vehicle, really needs to be replaced. Mr. Budding asked if there was a big problem that was going to cost a lot of money to repair. Chief Davidson stated there are some rust problems as well as other vehicle maintenance issues. Mr. Budding stated that he has driven what most have called junk his whole life and believes that vehicles are just broken in at 100,000 miles. Chief Davidson stated that officers are driving these vehicles 8 hours a day and there is a safety/liability issue. City Manager Crusey added that these vehicles are on the street for 16 hours a day and need to be able to respond in an emergency. He explained that if an officer breaks down, it is a different situation than if a resident breaks down. Mr. Lovett asked Chief Davidson to explain idle time/engine hours. Chief Davidson stated the Police Department goes by engine hours rather than mileage. Typically, 1000 miles is the equivalent of 2500 idle hours and that once vehicles reach 100,000 miles, you are going to start having a lot of problems. Mr. Budding asked if there is a lot of hard driving. Chief Davidson replied that there is no harder driving on a vehicle than simple start/stop around town. Mr. Budding asked if this resolution required either both or neither vehicle to be replaced. City Manager Crusey stated that the resolution could be amended to separate the vehicles. Mr. Budding stated that he is comfortable replacing the 2000 vehicle, but not the other. Ms. Black agreed with Mr. Budding. Chief Davidson stated that in the budget process he had asked for 3 replacement vehicles and it was cut to 2 and he does not feel comfortable cutting it any further. He added that he assumes that by not replacing a vehicle, Council is ready to authorize any and all expenditures to keep the vehicle running. City Manager Crusey added that if vehicles keep getting pushed back, Council will eventually have to replace more vehicles than already projected. Chief Davidson agreed stating that these vehicles have been pushed back for the past two or three years. Mr. Lovett stated that 100,000 miles on a police cruiser is a lot different than 100,000 miles on a personal vehicle and added that police cars get a lot more wear and tear on the engine. He asked Chief Davidson if he would be exaggerating by saying that 100,000 miles on a cruiser is the equivalent to 300,000 miles on a personal vehicle. Chief Davidson replied that it would be more accurate to say 250,000 miles. Mr. Kessler added that this is a buyer's market and that by purchasing through the State of Ohio the City will be saving money.

Mr. Gibson moved to amend the resolution to vote on each vehicle separately. Mr. Budding seconded the motion. Motion was passed 7-0.

Mr. Gibson made a motion to replace the model year 2000 police vehicle. Seconded by Mr. Lovett. Motion passed 7-0. Resolution 11-10.

Mr. Kessler made a motion to replace the model year 2006 police vehicle. President Hale stated that there are certain things that are necessary for the safety of the city and police vehicles are one of those things. Also, as

Surplus Property

the Chief noted, he had asked for 3 vehicles during budget time and was already cut to 2 vehicles. For those reasons, President Hale stated he will be voting to replace this vehicle. Mr. Budding stated that if he felt that by not replacing this vehicle he would be putting anybody in peril he would vote to replace the vehicle. President Hale stated that we have to rely on the Chief and he has been diligent in his work and he respects his opinion. Mr. Lovett stated that if we fall behind in the schedule, it will eventually cost the City more money to replace those vehicles down the road.

There being no further discussion, Mr. Kessler sponsored this resolution and moved for its adoption. Mr. Lovett seconded the motion and it passed 4-3; Ms. Black, Mr. Budding and Mr. Gibson voted no. Resolution 12-10 was declared passed and President Hale affixed his signature in witness thereto.

A resolution declaring personal property owned by the City of Tipp City to be declared surplus property and no longer useful in the general operation of the City.

Clerk of Council Summary: This resolution declares the City's intent to dispose of surplus items in accordance with law for items with a value of \$1,000 or more.

City Manager's Comments: The adoption of this resolution would declare a 1998 Woodchuck Chipper to be surplus property and authorize the City Manager to dispose of said property by public sale or auction. A new chipper for the Electric Department was included in the 2010 budget and has been purchased. The proceeds from the sale of the surplus chipper will be returned to the Electric Fund.

There being no further discussion, Mr. Kessler sponsored this resolution and moved for its adoption. Motion was seconded by Mr. Budding and passed with a 7-0 vote. Resolution 13-10 was declared passed and President Hale affixed his signature in witness thereto.

**Ordinances
(First Reading)**

There were none.

Motions
Board Appointment

Mayor Gillis made a motion to appoint Karen Kuziinsky to the Restoration and Architectural Board of Review for a term expiring December 31, 2012. Mr. Kessler seconded the motion and it passed with a 7-0 vote.

License for
Encroachment

President Hale made a motion to grant the encroachment requested by Superior Auto Body, 27 West Franklin Street. Motion was seconded by Ms. Black and approved with a 6-1 vote; Mr. Kessler voted no stating that he believed granting this encroachment would be setting a precedent affecting the right-of-way.

Miscellaneous
Public Hearing Holiday
Inn

President Hale opened the public hearing and those individuals who wished to speak were sworn in by the Law Director.

Mr. Vath reported to Council that the BZA upheld the decision of the Zoning Administrator regarding an interpretation of Code 154.107(D). The Zoning Administrator's decision held that Code 154.107(D) does not permit the

Board of Zoning Appeals to issue variances for the area of signs. Terry Riddle, COO of the Amerilodge Hospitality Group has appealed this decision of the BZA to Council in accordance with his January 25, 2010 letter. The applicant had originally requested a variance of 80 square feet to the maximum allowable area of 120 square feet, for ground signs abutting Interstate 75 in business or commercial districts, which are noted in Code 154.101(A)(2). Code 154.107(D)(1) was adopted by Council on 8/4/08 as part of a targeted revision to the Tipp City sign code. Essentially this revision included the elimination of all variances to the sign code except for variances to sign height. On January 20, 2010, the BZA granted a variance of 10 feet to the maximum allowable height of 40 feet, for ground signs abutting interstate 75 to the applicant. This variance would allow a new ground highway sign to have a height of 50 feet. The most recent placement of a highway sign occurred in 2007 with Menards. This highway sign is on 40' in height and 120 square feet in area. There is an existing sign frame on the site that could be utilized by the applicant as a pre-existing nonconformity. The sign frame has an area of 182 square feet and a height of 55 feet. According to Mr. Riddle, this existing sign frame does not meet the current standards set by Holiday Inn Express corporate offices and cannot and/or will not be used.

Law Director Moore stated that under the existing sign code, Council does not have authority to grant a variance in regard to the sign requested by Holiday Inn. He added the only way Council might consider doing this is by passing special legislation, but he would advise against it. A code is in place that does not allow Council to grant this variance as requested, and if Council amends the code to allow it, they will open the City up to various other challenges and a series of problematic issues for the City of Tipp City and its signage.

Mr. Riddle stated that he understood the BZA hands were tied and now understands that it is now recommended that Council not do anything, but stated that the current sign code is stifling the growth of Tipp City and his success. He added that Amerilodge specifically chose the City of Tipp City and the City and County expressed a commitment to long term development. When the market study was completed, several new signs were observed and the assumption was made that he would be afforded the same opportunity. Mr. Riddle asked that his request be reconsidered due to the following: ISG is in the process of rebranding the entire portfolio and re-launching all existing hotels and new hotels being opened with a new logo. He has exhausted all efforts with ISG and they will not bend on re-launching their brand. Mr. Riddle noted that as in any rebranding consistency is critical to success and stated not having a visible roadway sign has been detrimental to their success. Mr. Riddle shared photos of the sign that he would like to put up and the sign currently in place. He explained his frustration with the current sign ordinance stating that it allows for unmaintained and grandfathered in old signs, but will not allow an updated sign. He further added that he understands that Tipp City wants to maintain its historical feel, but added that his hotel is not adjacent to historic downtown. Mr. Riddle stated a new sign will improve occupancy thus improving dollars to the City and he asked Council to grant him the ability to stay in business. Mr. Riddle stated that he cannot pay his bills as it is now. He noted that his hotel cannot be seen southbound at all and can only be seen northbound when you get to the exit. Mr. Riddle stated that he believes the Menards sign looks ridiculous in comparison to the rest of the signs and that

building and that there is no way that Menards thought that it was a good investment.

Mr. Gibson asked if Mr. Riddle thought his hotel would be seen if he had the new sign and if there was any indicator of the cost to his business if he was forced to use the existing structure. Mr. Riddle stated that ISG will not allow him to use the old sign. Mr. Gibson asked Mr. Riddle to state what exactly he wanted the City Council to do tonight. Mr. Riddle replied that he would have liked for them to grant the variance, and added that the City seriously needs to seriously consider revamping the signage ordinance.

City Manager Crusey asked if the height of 50 feet is acceptable. Mr. Riddle stated that it was. City Manager Crusey asked if Mr. Riddle was stating that a 120 square foot sign was not visible, but a 200 square foot sign was. Mr. Riddle stated that was correct; you will be able to see a big H and will have time to get off the highway, but a small H isn't as visible and people will pass right by. Mr. Crusey asked for the dimensions of the sign being requested. Mr. Riddle replied 10'4" x 20' 10". Mr. Crusey asked for clarification that the difference in height is 3 feet. Mr. Riddle stated that was correct.

President Hale asked if a sign could be put further down the highway before the exit. Mr. Riddle stated that he does not own property further down the highway and that no billboards are available. City Manager Crusey asked if Mr. Riddle had looked into trailblazers. Mr. Riddle stated that he has a trailblazer, but doesn't believe they are very effective. He also added that his building could not be seen during the recent snow storms.

Mr. Kessler asked for clarification from Law Director Moore as to whether Mr. Riddle is required to use the existing structure? Mr. Moore replied yes.

Mr. Budding asked how long the sign code has been in place. Mr. Lovett stated it was put into place in 2003. Mr. Budding stated that Mr. Riddle makes valid points and asked what is it that the City is afraid of, some litigation from people who have abided by code up to this point? Mr. Moore stated that Council does not have legal authority to grant a variance and if they do, they will be outside the law. If legislation is passed to allow this company special treatment, then Council will have an argument that they are not treating everyone the same which raises equal protection questions.

President Hale asked if the only way to grant this request is to write sign code for highway exits. Mr. Moore replied yes, Council would have to rewrite the Code to afford everyone the same opportunity.

Mr. Riddle stated that if they had known about the sign ordinance they would not have built here and added that larger hotel developers would have done their due diligence instead of assuming they would be granted the same as other signs along the highway. He reiterated that he believes Council should revisit sign ordinance.

Mr. Gibson stated that he takes a different look at the code and he doesn't see anything that specifically precludes City Council from granting variances. Mr. Lovett asked Mr. Gibson if he read the memos that Mr. Moore

has written to Council. Mr. Gibson replied that he did. City Manager Crusey stated that the appeal is whether the BZA made the correct decision. Mr. Moore added whether the correct decision in interpreting the code was made. He repeated that Council does not have authority to say you are not going to have the code apply in this instance; there is no authority in the ordinances to do that. Mr. Gibson stated that the ability to grant variances has been established by the statute and has been given to the BZA, Planning Board and this body, correct? Mr. Moore replied that Council has reviewing ability. Mr. Gibson asked if Council could overturn the BZA's decision to not let this sign go up. Mr. Moore replied that Council can overturn the decision of the BZA that they did not apply the law correctly, but Council cannot say we can allow you to have a variance even though the code does not allow it. Mr. Gibson stated that he cannot believe that the City Council of Tipp City would prohibit anyone ever for asking for a variance on the sign code and he believes that the City Council can grant the variance. He added that he would move to grant the variance of 10 feet of the maximum allowable height of 40 feet for ground signs and this particular ground sign abutting I-75. Mr. Lovett reminded Mr. Gibson that we are still in a public hearing and asked if this was a motion or just language for discussion. Mr. Gibson replied it was just discussion but is the verbiage he would recommend. He added that City Council needs to take a look at their position to encourage new business to come in and if the code needs to be revisited then that's what Council should do. Mr. Gibson believes there should be liberal construction in favor of the applicant and that in this case the sign on the interstate and is not that big of a change or deviation. President Hale disagreed stating it is a big deviation because current sign code says 120 square feet and they want this sign 200 square foot. Mr. Gibson stated that staff was willing to accept 182 square foot, so the City is already violating our own sign code. President Hale disagreed stating that the 182 square foot is for a sign that is already in place and grandfathered in. He agreed that Council should look at the sign code, but does not believe that they should arbitrarily allow variations to the sign code.

Mr. Lovett stated that there is key piece of information that Mr. Gibson does not have and Mr. Moore discusses this in his memo. In 2008, when we were in the midst of the litigation of Warrior Racing, this Council had the guidance of a gentleman who is an expert on first amendment sign law and he covered this exact type of scenario and Council was warned about this type of legal difficulty. Mr. Lovett asked Mr. Moore how long he had been a City Attorney and who else he represents. Mr. Moore replied that he has been a City Attorney for more than 25 years and represents Tipp City and the City of Union in Montgomery County. Mr. Lovett asked Mr. Moore if he had seen a lot of sign cases and was aware of the cost of litigation. Mr. Moore stated that he has seen a lot of sign cases and he was aware of the high costs of litigation. Mr. Lovett asked Mr. Moore if Council does what Mr. Gibson is suggesting, could it cost the city hundreds of thousands of dollars in legal fees. Mr. Moore replied that this is not an exaggeration if this kind of step is taken. He added that it is expensive to litigate, and you can get into certain kinds of actions where attorney fees are also awarded. Mr. Moore stated that if Council took this kind of action, he would tell Council that they could not do it because he has a duty to enforce the law.

Mr. Gibson asked Mr. Moore to tell the citizens what bad things will happen to the City if this gentleman has his sign go up. Mr. Moore replied if

Public Hearing Gardens
Alive

Council allows the sign to go up, they are violating the law because the law does not allow it to go up. So, if Council allows it arbitrarily, capriciously, and illegally, and if some other sign issue comes in and we don't grant it, then there will be litigation we will have to defend; you could get into First Amendment violations.

Ms. Black asked if Council needs to change the sign code to get this to work. Mr. Moore replied yes, the City has ordinances and the law and you have to change the law. Council needs to make a determination as to whether they want to expand the height and the size of your signage, and then go through the legislative process to do so.

Ms. Black asked Mr. Riddle if he would be willing to wait for Council to do something. Mr. Riddle stated that he doesn't have a choice.

Mr. Budding stated that Mr. Riddle makes a valid point and is in favor of looking at revising the sign code.

Mr. Lovett stated that he doesn't think Mr. Riddle is overstating his case at all. In 2003 there were bitter arguments about sign code and that there is a strong vocal segment in this town who want to keep Tipp City just as it is. Mr. Lovett stated that this Council appears to be far more amenable to be more business friendly and if this Council wants to take another look at it he would encourage citizens to be part of the process.

President Hale stated that the sign code could be discussed at the Council Retreat.

President Hale closed the public hearing and informed Council that they had the choice of reversing, affirming, modifying, or rejecting the decision of the BZA. Mr. Lovett moved to affirm decision of the BZA, seconded by Kessler. Motion passed 5-2; Mr. Gibson and Ms. Black voted no.

President Hale declared the public hearing open and requested that the people who wished to speak stand and be sworn in by Law Director Moore. Mr. Gibson stated that this item was discussed when he was a member of the Planning Board and he would therefore recuse himself from discussion and the vote. Mr. Vath reported that on January 20, 2010, the BZA upheld the decision of the Planning Board in the denial of an appeal from Gardens Alive regarding requested modifications to a previously approved site plan. The Planning Board denied requests for a waiver of the off street parking requirement and the paving requirement.

Mr. Lovett asked if this property was zoned agricultural. Mr. Vath stated that the property is zoned light industrial, but is used as agricultural in a horticultural farm. Mr. Lovett asked if Council granted the relief that they seek, couldn't this be sold and the usage grandfathered in and used by subsequent owners. Mr. Vath replied that he believes it would be grandfathered in unless they wanted to expand the parking lot. Mr. Lovett asked if the applicant wants to lay down hard gravel. Mr. Vath replied to the affirmative stating they want to install a gravel parking area or not install the additional parking. Mr. Lovett asked if there will be run-off issues. Mr. Vath stated that there could be some run off issues with gravel, depending on how

the parking lot is graded and how the gravel is installed and maintained.

Mr. Felix Cooper from GardensAlive! Informed Council that the issue is the ability for to adjust an ordinance. He added that both the BZA and Planning Board recognized the situation but could not act. Mr. Cooper believes that this case is very similar to the sign case in that regard. He noted that his position is if you look at the GardensAlive! operation along that stretch of property, they do a lot of things that Tipp City can be proud and the type of research and horticultural crops being done will put Tipp City on the map nationally and internationally. Mr. Cooper stated that this expense and requirement by the ordinance is extremely expensive and questioned the purpose of that ordinance; safety, aesthetics or general design of the City. He stated that he can't imagine those design standards being set in an agricultural situation and he believes it to be an oversight or non-consideration. Mr. Cooper stated that this should be considered an omission in that zoning ordinance.

City Manager Crusey asked Mr. Cooper to explain how this site is utilized and why he does not think paving is necessary. Mr. Cooper replied that they develop horticultural sites, plant breeding, test plants for the USDA and other organizations, plant propagation, grow out food crops, perennial crops, and new plants that haven't been tested in this part of the country. The building houses machinery, equipment, and tools; the greenhouse brings new plants up out of the breeding program. The building expansion is to accommodate some additional potting media.

President Hale asked how many people work there and how many parking spots are being requested? Mr. Cooper replied that they employ 4 people and they are requesting 3-4 spots. President Hale asked how often people are there and if they drive individually or are bussed in. Mr. Cooper stated that they employ additional seasonal employees and a company vehicle is used to transport them to this building. The cost of paving this parking lot would be between \$8-11,000.

Mr. Lovett asked the overall project cost and Mr. Cooper replied \$50,000. Mr. Cooper stated that the minutes state \$60,000 but he does not believe he said that and the minutes are incorrect. President Hale asked for clarification that if this property was zoned agricultural the same paving requirements wouldn't be in place. Mr. Crusey stated that President Hale was incorrect as the City does not have any paving requirements. Mr. Cooper stated that when businesses look at the cost of doing business, they make choices about what they are going to use it as. He stated that GardensAlive! looked at other farms in rural communities, but decided on Tipp City and it is wonderful as it materializes. He added that this site is going to be a beautiful site as it's developed, it is still in growth process but has changed considerably, and it's a draw to Tipp City.

Mr. Budding asked if there were any retail sales. Mr. Cooper stated there was not.

John Berbach, 520 W. Dow. Mr. Berbach stated that he has been a member of Plan Board for 5 years and has never felt it necessary to come to Council until now. He informed Council that the decision they make tonight

will have a big impact in the decision making of Planning Board, BZA, and staff in the future. Mr. Berbach said before Council is the request to waive a hard surface requirement and allow for a gravel drive. City code does not allow this type of request and approval will set a precedent. The Planning Board waived several requirements including lighting, curbing, and landscaping. The BZA, Planning Board, and staff take their lead from City Council through the adoption of various plans, including the legacy district, and consider that when making decisions as well as city code. This gives guidelines as to what to make decisions by. To Mr. Berbach's knowledge, there is no agricultural zoning in the Code, it is considered special use. Mr. Berbach requested that Council keep it consistent and reminded them that when special agreements or playing favorites occur, mixed signals are sent to the Planning Board, BZA, and City staff. The decision Council is going to make is very important and can't be downplayed – it is highly visible. Mr. Berbach informed Council that the Planning Board works to keep a lot of cases from them.

President Hale asked why Mr. Berbach believes this is highly visible. Mr. Berbach stated that he can foresee adding another Council meeting if this variance is approved, because of the precedent being set. He stated that the City hasn't allowed a gravel driveway for 20 years. Mr. Berbach reiterated that this is a very important decision and Council will be sending the Boards a direction. President Hale replied that he doesn't understand how granting a variance will change the direction of the Planning Board and the BZA and stated that it doesn't change their jobs. He asked Mr. Berbach how it changes what the Boards are requested to do. Mr. Berbach replied that it would be easier for him to take the easy road and be the nice guy instead of upholding the guidelines. President Hale stated he doesn't see where it changes the guidelines of the Board and stated that they still have the opportunity to look at each individual situation on its own merits. Mr. Berbach stated he doesn't understand how Council can change the codes for one organization for signs, and suggested that Council change the code to allow gravel drives and asked the question "why play favorites."

Mr. Lovett stated that he has been wrestling with the fact that the property is isolated. Because it is isolated, he can see why this is a unique case and why GardensAlive! shouldn't have to go to the extra expense. Mr. Berbach stated that they are looking for guidance from Council and that codes are the roadmaps we are supposed to live by. He added that every citizen has the right to come before Council, but when Council makes decisions and plays favorites after the Planning Board and the BZA have said no, it sets a precedent.

Mark Springer, Mr. Springer noted that he has served on the Planning Board for 9 years and is currently the Chairman. He stated that the Board looks at applying the code equally and treating everyone the same. Mr. Springer noted several cases that have come before the Board recently including Captor's parking lot and High Tech. both of which were unique situations. He stated that if the Board gets into a mode of applying code to unique situations, they have to apply universally. Mr. Springer added that if Council sets a precedent and picks and chooses who the Code is applied to, we open ourselves up as a City to liability and a lot of problems and Council will have a parade of people coming here to ask for variances for their unique situations.

Mr. Cooper stated that he believed the appeal of the BZA decision was a moot point; however, he believes there is an oversight in the Code for agricultural use. He believes that the asking an agricultural business to put down paving for structures that are built on site does not match the activity. Safety and aesthetics that have to be as designed can be addressed with road front – to meet the intent of the zoning ordinance.

Mr. Crusey informed Council that unlike the previous case, in this matter City Council does have the authority to grant a waiver.

Mr. Kessler asked about the people coming to visit the facility stating that Council was told that the parking would be for employees, not visitors. He noted that Council has dumped considerable expense on smaller businesses and forced them to put in much larger parking lots at much greater expense. If GardensAlive! is going to have visitors, they are going beyond what Council was led to believe. Mr. Kessler stated he will be supporting the Planning Board's decision. Mr. Cooper stated if Council can consider the appeal, then please consider it. He added that visitors would be coming once or twice a year for a field day. There is a frustration where we want to do business at that site and there are zoning rules that don't reflect the operation of the business. Mr. Cooper stated he is looking for a definition as to why this is in place – the intent – as it seems gray and doesn't reflect agricultural use.

President Hale asked for confirmation that this property is zoned light industrial, to which Mr. Cooper stated that President Hale was correct. Mr. Springer replied that it is zoned light industrial and if you grandfathered something like this in another business could come in and they would not be required to put in a parking lot. Mr. Springer stated that this should be looked at as a for-profit business in the industrial zone and Council should do what the code says.

President Hale closed the public hearing and informed Council that they had the choice of reversing, affirming, modifying, or rejecting the decision of the BZA.

Mr. Kessler made a motion to affirm the BZA finding. Motion was seconded by President Hale. Mr. Lovett noted that GardensAlive! and its predecessors have been part of this community for the better part of a century and they have had their ups and downs. He added that he is thrilled that they are here and wants them to be here for a long time and thanked them for all they do for our community. However, he finds what Mr. Berbach and Mr. Springer had to say very persuasive. Mr. Lovett added that he too has a small business and paid \$16,000 for his parking lot and GardensAlive! makes a lot more money than he does and it didn't put him out of business. Motion passed 5-1. Mr. Budding voted no.

Mr. Gibson then returned to the meeting.

Citizen Comments

There were none.

**Councilmember
Comments**

Mayor Gillis stated that a lot of hard decisions have to be made at Council meeting and we do our best to try to do the right thing.

Mr. Lovett reported that he attended the APPA convention in Washington DC last week and that all expenses would be reimbursed by OMEA. He met with energy representatives from John Boehner's office, Jimmy Jordan's office, and also met with Senator Voinovich. Climate change legislation is the hot item of discussion. The Waxman-Markey bill could cost Tipp City between 1.5 and 3.5 million dollars a year. It hasn't passed the Senate and with Congress and the President currently being busy with healthcare legislation it is not getting a whole lot of attention right now. The US EPA announced it is going to begin regulating carbon dioxide under the Clean Air Act as they state it is harmful to the health of Americans. The EPA is increasing looking at climate control regulations without passing through Congress which could impose significant costs on our electric system over time. There is currently a resolution pending in the Senate and similar legislation in the House that would oppose what the EPA is doing. The APPA and OMEA have expressed their concerns to the USEAP about following that tact and we also expressed our opinions to those he met with. Mr. Lovett stated that there is nothing more controversial than zoning issues and he doesn't want these gentlemen to think that you are not wanted and not appreciated. Both have wonderful operations, employ a lot of people, and have invested a lot of money here. He will personally do what he can to support you; tonight he voted to uphold the law. Mr. Lovett stated that he can't do something that could cost the city hundreds of thousands of dollars in legal fees and noted that it is important that we have consistencies in zoning.

Mr. Budding apologized for the inappropriate language that he used earlier in the meeting.

Mr. Gibson reminded citizens that this meeting will be rebroadcast on Channel 5 – KIT-TV (Keeping in Touch Television). In light of the sign hearing, he will be calling on members of the business community, residents, and the Chamber to share problems with the sign code. He is making a call to anyone that wishes to have their input known about revising, amending, abolishing the sign code to be in touch with himself or other members of Council with specific recommendations. Katie Black will be on the radio on Wednesday at noon.

Ms. Black notified residents that the Downtown Tipp City Partnership Board is looking for people to get involved in communities and the Board. She feels that the sign code needs to be revised and this is a great opportunity to do it. She respects the opinion of the Planning Board and the BZA.

President Hale stated that there are 5 members of Council that have owned or currently own a business and they "feel their pain." Unfortunately, at certain times Council's hands are tied with what they are allowed to do with the law, but it will be looked at very shortly.

City Manager Comments

City Manager Crusey noted that Council will hold a goal setting retreat on March 5th at 9 a.m. at A Learning Place in Piqua, Ohio. The meeting is open to the public and citizens are invited to attend.

Executive Session

President Hale made a motion to go into executive session to include City Council, City Manager Jon Crusey, and City Attorney Joe Moore. Mr. Kessler seconded the motion and it was unanimously approved.

Adjournment

The meeting was adjourned at 10:12 p.m. on a motion by Mayor Gillis, seconded by Ms. Black, and unanimously approved.

Patrick Hale, President

Attest: _____
Cathy Ross, Clerk of Council

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